

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA 338/2007

LEELAVATI Appellant
Through : Mr. R.P. Vats, Advocate.

versus

ORIENTAL BAN K OF COMMERCE
& ORS. Respondents
Through : Mr. S.K. Chaudhry, Advocate.

CORAM:**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG****HON'BLE MR. JUSTICE J.R. MIDHA**

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. Trial Court record has been perused.
2. Since learned counsel for the parties desire a final hearing at admission stage, we have heard learned counsel at length and are disposing of the appeal finally.
3. Appellant is the wife of Satya Narain Sharma.
4. Satya Narain Sharma carries on business as Sole Proprietor of M/s. Sanjay Plastic Udyog.
5. In the name of his sole proprietary firm, Satya Narain Sharma availed various credit facilities from Oriental Bank of Commerce. To secure repayment of the outstanding amounts,

appellant agreed to stand guarantee and also mortgage her property bearing House No. WZ-51, (in Khasra No. 42) Old Lal Dora Abadi of Village Possangipur, New Delhi.

6. On 25th September, 1999, appellant deposited with the bank the title deed of the said property. According to the bank she also executed various documents in her capacity as a guarantor.

7. M/s. Sukraya Industries, another firm, had likewise availed various credit facilities from the same bank, that is, Oriental Bank of Commerce and in respect of said credit facility, appellant had stood as guarantor and had created an equitable mortgage of the same property, i.e., House No. WZ-51, (in Khasra No. 42) Old Lal Dora Abadi of Village Possangipur, New Delhi.

8. Outstanding debts payable by M/s. Sukarya Industries being more than Rs.10 lakhs and the account becoming sticky, the bank resorted to proceeding for recovery before the Debt Recovery Tribunal under Recovery of Debts Due To Banking and Financial Institutions Act, 1995.

9. The account of M/s. Sanjay Plastic Udyog also become sticky but since money due and payable was less than Rs. 10 lakhs a suit for recovery was filed by the bank in the Court of Learned District Judge.

10. The appellant stated in her written statement that she was an illiterate house wife and that she never executed any document relied upon by the bank. She denied having created

any equitable mortgage. Another defence was taken under Section 67A of the Transfer Property Act, 1882. Defence was that the bank was obliged to file a single suit to enforce the mortgage in relation to the transaction with M/s. Sanjay Plastic Udyog and M/s. Sukarya Industries.

11. At the trial, the bank proved letter dated 25.9.1999 executed by the appellant while depositing the title deed of her property as Ex.P.W.2/10. No due certificate, Ex.P.W.2/11 issued by appellant and an affidavit Ex.P.W.2/12 relating to the property and executed by the affidavit were also proved. The title deed of the mortgaged property was proved as Ex.P.W.2/13. The bank also proved that the cash credit (hypothecation) limit which was originally sanctioned in sum of Rs.1,50,000/- was enhanced to Rs. 3 lakhs and vide Ex.P.W.2/25 the appellant had given her consent to the enhancement of the cash credit facility. A certificate dated 15.03.2000 executed by the appellant pertaining to no due against the mortgaged property was proved as Ex.P.W.2/26. It was proved that vide Ex.P.W.2/33, on 12.12.2001, the appellant had agreed to extend the mortgage in respect of a credit facility granted to M/s. Sukarya Industries.

12. The loan application duly signed by the husband of the appellant and consigned by the appellant as a guarantor was proved as Ex.P.W.2/1. The agreement for guarantee signed by the appellant was proved as Ex.P.W.2/9.

13. With reference to the loan availed of by the sole proprietary firm of the appellant's husband and the proved documents, the Learned Trial Judge has concluded that the bank has successfully proved that the husband availed a cash credit limit and wife, i.e., the appellant stood as a guarantor and had mortgaged her house.

14. The finding returned by the Learned Trial Judge is as follows: -

- a) That Section 67A of the Transfer of Property Act is not attracted where two different Courts have jurisdiction to entertain a plaint relating to two different loans.
- b) That the documents on record establish appellant having stood as guarantor and having mortgaged the subject property.
- c) The amount outstanding shown in the accounts maintained by the bank was due and payable by the husband of the appellant and hence mortgage decree as prayed was liable to be passed.

15. In appeal it is urged that the appellant stated in her testimony that she was totally dependent on others even for her personal work like changing clothes etc. and therefore the finding returned that the appellant had executed various documents when loan was availed of is incorrect.

16. No other plea has been urged at the hearing today.

17. Concentrating on the plea urged at the hearing today, it would be noted that the appellant has not explained as to how the title deed of her property came in possession of the bank if she had not executed the documents relating to the guarantee and the mortgage.

18. Learned counsel for the appellant urges that the title documents of the house were in custody of the husband of the appellant and he has misused the same.

19. To a question, whether the appellant has initiated criminal proceeding against her husband, obvious answer has been given, i.e., 'No. In India no wife would prosecute her husband.'

20. We note that the appellant has not projected a case before the Learned Trial Judge that her husband has belied her trust.

21. Thus, we have no hesitation to conclude that the view taken by the Learned Trial Judge is correct.

22. We note that the Learned Trial Judge has granted six months time to the defendants of the suit to pay the amount decreed failing which the same shall be recovered from the sale proceeds of the mortgaged property as per law.

23. Since the appeal is being disposed of today, we extend the period of six months granted by the Learned Trial Judge directing that the said time would commence with effect from today.

24. The appeal is dismissed with cost in favour of the respondent.

25. TCR be returned.

PRADEEP NANDRAJOG, J

J.R. MIDHA, J

SEPTEMBER 09, 2008
mk